

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission  
On Its Own Motion

Adoption of 83 Ill. Adm. Code 727 to  
Implement P.A. 91-0518 in applica-  
tion to schools, governmental units,  
and not for profit organizations.

00- 0405

ORDER

By the Commission:

On August 13, 1999, Governor Ryan signed into law P.A. 91-0518, amending Section 15.6 of the Emergency Telephone System Act [50 ILCS 750/15.6]. The revision to Section 15.6 of the Act requires the Illinois Commerce Commission ("Commission") to promulgate rules by January 1, 2000 for the administration of the Section. The Section 15.6(a) states:

After June 30, 2000, or within 18 months after enhanced 9-1-1 service becomes available, any entity that installs or operates a private business switch service and provides telecommunications facilities or services to businesses shall assure that the system is connected to the public switched network in a manner that calls to 9-1-1 result in automatic number and location identification. For buildings having their own street address and containing workspace of 40,000 square feet or less, location identification shall include the building's street address. For buildings having their own street address and containing workspace of more than 40,000 square feet, location identification shall include the building's street address and one distinct location identification per 40,000 square feet of workspace. Separate buildings containing workspace of 40,000 square feet or less having a common public street address shall have a distinct location identification for each building in addition to the street address.

Section 15.6(b) provides exemptions from the requirements of subsection (a).

On December 15, 1999, the Commission opened Docket 99-0667 and entered an order that adopted emergency rules to implement Section 15.6 of the Act, and authorized the submission of the first notice of proposed rules to the Secretary of State. The emergency rules at 83 Ill. Adm. Code 726, "Requirements for Businesses with Private Switch Service to Comply with the Emergency Telephone System Act", became

effective on December 23, 1999, for a maximum of 150 days. The one set of rules covered businesses and non-business entities including schools, governmental units, and not for profit organizations. The procedural and evidentiary history of Docket 99-0667 is summarized in the order entered March 15, 2000 that authorized the submission of the second notice of proposed rules to the Joint Committee on Administrative Rules.

The proposed rules were considered by the Joint Committee at its meeting on April 11, 2000. At that time the Joint Committee issued an objection to the proposed rules and a prohibition on the filing of the proposed rules with the Secretary of State. See 24 Ill. Reg. 6741, April 28, 2000. The Joint Committee stated that:

[t]he rulemaking (1) exceeds the Commission's statutory authority under Section 15.6 of the Act by extending the application of the Act to schools, governmental units and not for profit organizations and (2) creates an undue economic and regulatory burden on business entities by holding those entities to all of 13 separate requirements to qualify to operate a Personal [sic] Emergency Answering Point, rather than applying only those standards most relevant to the size and type of entity and/or facility seeking the PEAP and the minimum standards necessary to ensure the safety of the persons involved.

The Commission notes that the emergency rules became void by operation of law on or about May 19, 2000, leaving nothing in place to guide any entity seeking Commission certification under Section 15.6(b) to operate its own emergency phone system certification when the statutory requirements become effective after June 30, 2000.

In an order entered June 7, 2000 in Docket 99-0667, the Commission has proposed modified rules to satisfy the objection of the Joint Committee by limiting the application of Part 726 to businesses and by amending the standards for the operation of the private emergency answering points. This leaves schools, governmental units, and not for profit organizations without any indication of whether the Commission continues to consider these entities to be covered by Section 15.6 of the Act.

The Commission takes administrative notice of the order entered in Docket 99-0667 on March 15, 2000. The issue of the application of the statute to schools was litigated in Docket 99-0667, and the Commission was of the opinion then that the statutory requirements applied to schools. The Commission is of the same opinion now. There has been no convincing argument made nor evidence presented to sustain the proposition that schools are not covered by Section 15.6 of the Act. In its objection, the Joint Committee likewise expresses concern over the inclusion of governmental units and not for profit organizations within the scope of the rules. There is no specific statutory exemption for schools, governmental units, and not for profit organizations. It is not for the Commission to create an exemption to statutory coverage. There has been no evidence recorded in Docket 99-0667 that would indicate that schools, gov-

ernmental units, and not for profit organizations do not utilize private business switch service. On these bases, the Commission continues to be of the opinion that schools, governmental units, and not for profit organizations remain within the scope of Section 15.6 of the Emergency Telephone System Act.

As indicated above, after June 30, 2000, Section 15.6 of the Act imposes certain requirements regarding location and number identification for emergency calls. The emergency rules that were adopted in December 1999 in Docket 99-0667 became void by operation of law on or about May 19, 2000. At present, there are no rules in place to provide guidance to any entity that would seek certification from the Commission to operate its own emergency phone system so that it would be exempt from the requirements of Section 15.6(a). In a Staff Report dated June 2, 2000, the Staff of the Commission has recounted the discussions between Staff and representatives of business interests and 9-1-1 systems concerning the criteria for certification that are contained in Subpart D of the proposed rules. These are relevant to the second point in the Joint Committee's objection and prohibition. Agreement has been reached on language that accommodates the concerns of the business community and still provides the standards necessary for the operation of the private emergency answering points. The Staff Report provides support for the language reflected in the rules attached as the Appendix to this Order. This is the same Staff Report that was filed as part of the record in Docket 99-0667 to support the modification of the originally proposed rules to meet the objection of the Joint Committee. There is no reason to have two differing sets of standards for businesses and non-business entities, so the Commission is of the opinion that any standards applicable to businesses regarding the operation of private emergency answering points should also be applicable to schools, governmental entities, and not for profit organizations.

Pursuant to Section 5-45 of the Illinois Administrative Procedure Act, the Commission has determined that it is a matter of public safety and welfare that schools, governmental entities, and not for profit organizations be covered by Section 15.6 of the Emergency Telephone System Act and that it is an appropriate use of emergency rulemaking authority to adopt rules on an emergency basis to provide for such coverage. The rules will also provide a framework for those schools, governmental units, and not for profit organizations to qualify for an exemption from the requirements of Section 15.6(a) of the Act.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the subject matter herein;
- (2) the Commission should take administrative notice of P.A. 91-0518, the order entered in Docket 99-0667 on March 15, 2000, and the Filing Prohibition issued by the Joint Committee on Administrative Rules on April 11, 2000 and published on April 28, 2000 at 24 Ill. Reg. 6741;

- (3) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;
- (4) the Staff Report dated June 2, 2000 should be made a part of the record of this proceeding;
- (5) the rules at 83 Ill. Adm. Code 727, as reflected in the Appendix to this Order, should be adopted on an emergency basis pursuant to Section 5-45 of the Illinois Administrative Procedure Act ("IAPA") with an effective date of June 12, 2000 and a Notice of Emergency Rules should be submitted to the Secretary of State pursuant to Section 5-45 of the IAPA;
- (6) the Notice of Proposed Rules for 83 Ill. Adm. Code 727 should be submitted to the Secretary of State pursuant to Section 5-40 of the IAPA;
- (7) this proceeding should be a rulemaking and should be conducted as such.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the rules at 83 Ill. Adm. Code 727, as reflected in the attached Appendix, are adopted on an emergency basis pursuant to Section 5-45 of the Illinois Administrative Procedure Act, to be effective June 12, 2000, and that the Notice of Emergency Rules be submitted to the Secretary of State.

IT IS FURTHER ORDERED that the Notice of Proposed Rules for 83 Ill. Adm. Code 727, as reflected in the attached Appendix, be submitted to the Secretary of State pursuant to Section 5-40 of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that the Commission takes administrative notice of P.A. 91-0518, the order entered in Docket 99-0667 on March 15, 2000, and the Filing Prohibition issued by the Joint Committee on Administrative Rules on April 11, 200 and published on April 28, 2000 at 24 Ill. Reg. 6741.

IT IS FURTHER ORDERED that the Staff Report dated June 2, 2000 is made a part of the record in this proceeding.

IT IS FURTHER ORDERED that this proceeding is a rulemaking and shall be conducted as such and not as a contested case.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 7th day of June, 2000.

(SIGNED) Richard L. Mathias

Chairman

(S E A L)